

REMARKS

SUMMARY

Claims 1-23 are pending. Claims 19-23 have been added. Claims 1-9 have been rejected under 35 U.S.C. § 101 as allegedly non-statutory. Claims 1, 6-10, and 15-18 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Lazarus et al.*, U.S. Patent No. 7,165,037 (“*Lazarus*”), further in view of *Johnson et al.*, U.S. Patent No. 6,067,525 (“*Johnson*”). Claims 2-5 and 11-14 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Lazarus* and *Johnson*, further in view of *Pednault et al.*, U.S. Patent Publication No. 2003/0176931 (“*Pednault*”).

APPLICANTS’ RESPONSE

In this Response, Applicants present arguments concerning the patentability of claims 1-18 to address the Examiner’s rejections. Applicants’ silence with regard to any aspect of the Examiner’s rejections of the dependent claims constitutes recognition by the Applicants that the rejections are moot based on Applicants’ Remarks relative to the independent claim from which the dependent claims depend.

Claims 1 and 4 have been amended to better clarify the claimed subject matter. Claims 19-23 have been added. No new matter is introduced. Support can be found, for example, in paragraphs [0024]-[0026].

Claims 10 and 15-18 Do Not Recite Means Plus Function Elements As Alleged.

At the outset, the Office Action rejects claims 10 and 15-18 for the same reasons as claims 1 and 6-9,1 in particular that they repeat the subject matter “as a set of ‘means-plus-function’ elements rather than a series of steps.” Office Action, p. 6. Applicants clarify that, as recited, claims 10 and 15-18 do not necessarily recite, and are not so limited to, a recitation of means plus function elements. In particular, claim 10 recites, inter alia:

a memory device for storing the computer program thereon

a data processor, coupled to the memory, which...

MPEP § 2181 sets forth a three-pronged test to determine whether a claim is a means plus function claim: (A) the claim limitations must use the phrase "means for" or "step for; (B) the "means for" or "step for" must be modified by functional language; and (C) the phrase "means for" or "step for" must not be modified by sufficient structure, material, or acts for achieving the specified function.

First, claim 10 does not recite the “means for” or “step for” language. Second, “a memory device” is recited to “stor[e] the computer program thereon” In addition, “[A] data processor” is recited to, among other operations, “summarize[] market data according to sales territory,”

Accordingly, the interpretation of claim 10 and 15-18 should not be limited to a recitation of means plus function elements. Applicants request withdrawal of the statements to this effect.

35 U.S.C. § 101 REJECTIONS

As amended, claim 1 recites:

A method for operating a computing apparatus configured to measure performance discrepancies among sales territories, comprising invoking one or more computer processors

1 The Office Action states claims 1 and 6-10, which Applicants have interpreted to mean claims 1 and 6-9.

configured with instructions from one or more software modules to measure performance discrepancies among sales territories, the one or more computer processors performing the steps of:

- (a) maintaining a market data in a database;
- (b) summarizing at least a portion of said market data according to one or more sales territories selected from a market sales territory associated with the market data, thereby providing summarized market data;
- (c) performing a recursive partitioning analysis on said summarized market data to thereby partition said summarized market data into a plurality of nodes which for identifying significant segmentation variables;
- (d) bridging said portion of said market data with each one or more of said plurality of nodes to provide a bridged plurality of nodes; and
- (e) retaining an association between said at least a portion of said market data and each bridged plurality of nodes as an additional segmentation variable.

Amended claim 1 satisfies the machine portion of the machine-or-transformation test set out in *In re Bilski*, 545 F.3d 943 (Fed. Cir. 2008). The Board Of Patent Appeals And Interferences (“Board”) has held that a general purpose computer does not qualify as a “machine” under the machine-or-transformation test, but, when programmed to carry out particular functions, constitutes a special purpose computer. “[A] general purpose computer programmed to carry out a particular algorithm creates a “new machine” because a general purpose computer “in effect becomes a special purpose computer once it is programmed to perform particular functions pursuant to instructions from program software.” *Ex parte Halligan*, Appeal No. 2008-1588, p. 12

Amended claim 1 is directed to a method for operating a computing apparatus configured to measure performance discrepancies among sales territories, which is a special purpose machine and not a general purpose computer as the computing apparatus as recited specifies a particular type of computing apparatus. Therefore, the computing apparatus as recited qualifies as a “particular machine,” and amended claim 1 satisfies the machine prong of the *Bilski* test.

Moreover, amended claim 1 includes the apparatus that includes one or more processors that are “programmed to perform particular functions pursuant to instructions from program software” as required by the Board in *Halligan*. In particular, amended claim 1 recites, *inter alia*, “invoking one or more computer processors configured with instructions from one or more software modules to measure performance discrepancies among sales territories.” Amended claim 1 therefore includes, not a general purpose computer, but a machine specially configured to perform the techniques of

- (a) maintaining a market data in a database;
- (b) summarizing at least a portion of said market data according to one or more sales territories selected from a market sales territory associated with the market data, thereby providing summarized market data;
- (c) performing a recursive partitioning analysis on said summarized market data to thereby partition said summarized market data into a plurality of nodes which for identifying significant segmentation variables;
- (d) bridging said portion of said market data with each one or more of said plurality of nodes to provide a bridged plurality of nodes; and
- (e) retaining an association between said at least a portion of said market data and each bridged plurality of nodes as an additional segmentation variable.

Amended claim 1 satisfies at least the machine prong of the *Bilski* test and therefore all requirements of § 101. Applicants request withdrawal of the rejections thereto.

At least because of their dependence from claim 1, Applicants also request withdrawal of the § 101 rejections to claims 2-9.

35 U.S.C. § 103 REJECTIONS

A prima facie case of obviousness under 35 U.S.C. § 103 requires: 1) Determining the Scope and Content of the Prior Art, 2) Ascertaining the Differences Between the Claimed Invention and the Prior Art, and 3) Resolving the Level of Ordinary Skill in the Art. MPEP § 2141. Applicants submit that the Office Action does not set forth the required prima facie case.

A. **The Cited Art Does Not Show Or Suggest “Performing A Recursive Partitioning Analysis On Said Summarized Market Data To Thereby Partition Said Summarized Market Data Into A Plurality Of Nodes Which For Identifying Significant Segmentation Variables” As Recited In Claim 1.**

The Office Action alleges that *Lazarus* shows the foregoing feature of claim 1. Applicant submits that nothing in *Lazarus*, including the cited portion, Col. 15, lines 33-49, shows or suggests performing recursive partitioning analysis on market data as recited in claim 1. *Lazarus* merely discusses techniques for adjusting and moving segment vectors with respect to merchant segments so that “segment vectors accurately represent an aggregation of the members of the respective segments.” *Lazarus*, col. 14, lines 39-42. According to *Lazarus*, a user specifies a set of merchant segments. *Id.* at col. 14, lines 43-50. A user selects a merchant and assigns it to one of the merchant segments. *Id.* at col. 14, lines 51-56. A previously derived merchant vector is selected, and a segment vector is adjusted based on whether the segment matches the label

assigned to the merchant. *Id.* at col. 14, line 57- col. 15, line 8. The adjustment technique involves moving one or more segment vectors closer or further away from the merchant vector.

Applicants submit that nothing in the techniques of moving and adjusting segment vectors with respect to merchant vectors shows or suggests a recursive technique. Moreover, nothing in the foregoing portions shows or suggests partitioning market data. *Lazarus* merely discusses the movement of segment vectors, which are based on user-assigned segments, relative to merchant vectors.

B. Combining The Elements Of *Lazarus* And *Johnson* Does Not Yield Predictable Results.

The Office Action states that *Lazarus* does not teach sales agent territories but combines *Lazarus* with *Johnson* to arrive at the subject matter of claim 1. Applicants submit that combining *Lazarus* with *Johnson* does not yield predictable results. *Lazarus* discusses predictive modeling of consumer financial behavior based on previous spending by the consumer. *Lazarus*, Abstract. *Johnson* discusses techniques for automated salesperson support for multiple phases of the sales process. *Johnson*, Abstract. The system consists of a contact management module, an opportunity management module, a calendar module, a "to-do" list module, a forecast module, and a time management module. *Id.* at col. 19, line 48-60.

One of ordinary skill in the art would not combine *Lazarus* with *Johnson* to achieve the subject matter of claim 1 because such a combination would not achieve predictable results. First, *Johnson*'s system, as evidenced by the foregoing modules, concerns relationship management tools to support on-going sales relationships while *Lazarus* discusses predicting market-level results based on already-occurred transactions. Second, *Johnson*'s system is a tool used by a sales individual for relationship management while *Lazarus*'s techniques concerns market analysis. In both cases, one of ordinary skill in the art would not have combined the cited

references because a relationship management system and a market analysis system would be understood to diverge in function too greatly to be usable together to achieve the subject matter of claim 1.

Accordingly, nothing in *Lazarus* or *Johnson*, taken alone or in combination, shows or suggests the subject matter of amended claim 1. Applicants therefore request withdrawal of the rejections to claim 1, and at least because of their dependence from claim 1, the rejections to claims 2-9.

Claim 10 includes similar features as discussed in connection with claim 1. Accordingly, nothing in *Lazarus* or *Johnson*, taken alone or in combination, shows or suggests the subject matter of claim 10. Applicants therefore request withdrawal of the rejections to claim 10, and at least because of their dependence from claim 10, the rejections to claims 11-18.

CONCLUSION

Applicants respectfully submit that this application is now in condition for allowance.

Reconsideration and prompt allowance of which are respectfully requested.

The Examiner is invited to contact the undersigned at (212) 408-2517 if any additional information or assistance is required.

Applicants believe that no additional fee is due other than the two month extension in connection with the filing of this response. If any additional fee is due, or overpayment made, with regard to this response, Applicants authorize the Director to charge any such fee, and credit any overpayment, to Deposit Account No. 02-4377.

Respectfully submitted,

BAKER BOTTS L.L.P.



February 12, 2009

Date

Paul A. Ragusa
Patent Office Reg. No. 38,587

Jack L. Chen
Patent Office Reg. No. 48,634

30 Rockefeller Plaza
44th Floor
New York, NY 10012-4498
Attorney for Applicant(s)
212-408-2500